BANKS:
LIQUIDATION PROCEEDINGS:
DIVISION OF FINANCE:
COMMISSIONER OF FINANCE:

The Division of Finance may in its discretion properly advise the FDIC not to pay certain claims of corporate depositors asserted against the FDIC when an officer or debtor of a bank in liquidation has a financial interest in such corporate depositor.

OPINION NO. 338

November 2, 1964

FILED
338

Honorable Robert B. Mackey
Commissioner, Division of Finance
State of Missouri
12th Floor, Jefferson Building
Jefferson City, Missouri

Dear Mr. Mackey:

You have requested an official opinion of this office on the question of whether the Division of Finance may properly refuse to release deposits of corporations in a bank or trust company which is in the process of liquidation in the hands of the Division of Finance, in cases where persons having substantial interests in those depositor corporations are directors or borrowers of the bank or trust company in liquidation. The bank's deposits are insured by the Federal Deposit Insurance Corporation. We understand that by the terms "release" and "refusal to release" you mean advising the Federal Deposit Insurance Corporation either to pay or not to pay certain claims of depositors asserted against the FDIC.

Liquidation of banks and trust companies by the Division of Finance is governed by Chapter 361, RSMo 1959. Section 361.300 authorizes the finance commissioner to take possession of the business and property of a bank or trust company under certain circumstances. Section 361.510 provides that the commissioner shall notify all persons who may have claims against the bank or trust company to present such claims to him with proper proof thereof within four months from the date of the notice. Section 361.540 provides that the commissioner shall not later than thirty days after the time has expired to file objections to the claims, approve or reject every claim to which objections are not still pending. Section 361.570 provides for dividends to be paid by the commissioner on the order of the Circuit Court to creditors from funds remaining in the commissioner's hands.

The background of your inquiry is that a director of a bank in liquidation is the principal stockholder in a corporation with a deposit in the bank, and that there are other corporate depositors in which several of the bank's debtors are substantially interested. Your question concerns a situation that arises prior to the time for filing claims in the Circuit Court liquidation proceedings outlined above. You ask about the legality of refusing to release certain deposits; that is, advising the FDIC not to pay certain claims asserted against it until after the liability of directors and debtors with financial interests in the corporate depositors has been determined.

We feel that the commissioner has the discretion to advise the FDIC either to pay or not to pay certain claims of depositors. The claims of officers and stockholders as depositors in the assets of an insolvent bank are accorded the same rights as other depositors similarly situated. Therefore, innocent officers or stockholders of a bank are entitled to be paid as depositors in the distribution of its assets; however, the liquidation proceedings are in equity and the claims of officers or stockholders whose wrongdoing or mismanagement has contributed to the insolvency of the bank may be postponed until satisfaction of the claims of other depositors. One of the primary duties of the commissioner is to protect innocent depositors.

The FDIC after paying claims against it, files a claim in the liquidation proceedings. Those depositors who have not been paid by the FDIC may likewise file their claims. When the time arises for the commissioner to either accept or reject claims pursuant to the cited statutes, it may appear that the claims involved ought to be paid. If so, the commissioner may so advise the FDIC and, as we understand the situation, the FDIC would pay those claims. However, at the time for approval or rejection of claims by the commissioner, it still may not appear that the claims should be paid and the commissioner has the right to reject claims if he doubts the justice or validity thereof, Section 361.540(3), RSMo.

Since the statute accords such discretion to the commissioner of finance, it is certainly consonant with this discretion for the commissioner to advise the FDIC concerning the payment of claims against the FDIC asserted by depositors.

CONCLUSION

It is the opinion of this office that the Division of Finance may in its discretion properly advise the FDIC not to pay certain claims of corporate depositors asserted against the FDIC when an officer or debtor of a bank in liquidation has a financial interest in such corporate depositor.

The foregoing opinion, which I hereby approve, was prepared by my assistant Donald L. Randolph.

Very truly yours,

Thomas F. Eagleton

THOMAS F. EAGLETON
Attorney General